

SERVICE DATE - DECEMBER 31, 1996

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Finance Docket No. 30186 (Sub-No. 2)<sup>2</sup>

TONGUE RIVER RAILROAD CO.--RAIL CONSTRUCTION  
AND OPERATION--ASHLAND TO DECKER, MONTANA

Decided: December 20, 1996

By petition filed November 29, 1996, Northern Plains Resource Council (NPRC) seeks partial reconsideration of the Board's prior decision in this proceeding, served November 8, 1996. In Finance Docket No. 30186 (Sub-No. 2), we authorized Tongue River Railroad Company (TRRC) to construct and operate a rail line between Ashland, MT, and a point near Decker/Spring Creek, MT. In Finance Docket No. 30186, we reopened the proceeding and modified conditions attached to the original grant of authority for TRRC to construct and operate a line of railroad between Miles City, MT, and Ashland. NPRC seeks reconsideration of issues regarding the Multi-Agency/Railroad Task Force (Task Force) established in the November 8 decision. We will deny the petition.

BACKGROUND AND NPRC'S PETITION

TRRC's application in the Sub-No. 2 proceeding raised a number of complex environmental issues. Our Section of Environmental Analysis (SEA) recommended numerous mitigating measures, including the establishment of the Task Force and the requirement that TRRC participate in it. In addition to TRRC, the Task Force is comprised of this Board, two other federal agencies and two state agencies.<sup>3</sup> It is designed to advise, assist, and coordinate with TRRC in implementing the detailed mitigation measures we have imposed to address terrestrial and aquatic impacts for the Ashland-Decker segment.

We also stated in our November 8 decision that the Task Force will consult, as needed, with "affected interests, including ranchers, other landowners, Native Americans, and other federal, state, or private organizations that could provide additional expertise." November 8 decision at 19. Finally, we stated that TRRC will retain an independent third-party contractor, selected, supervised, and controlled by SEA, to aid

---

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction under 49 U.S.C. 10901.

<sup>2</sup> This decision also embraces Tongue River R.R.--Rail Construction and Operation--In Custer, Powder River and Rosebud Counties, Montana, Finance Docket No. 30186.

<sup>3</sup> The federal agencies are the U.S. Department of Interior's Bureau of Land Management and Fish and Wildlife Service. The state agencies are the Montana Department of Natural Resources and Conservation and the Montana Department of Fish, Wildlife, and Parks.

the Board in fulfilling its responsibility as the lead agency for the Task Force.

In its petition, NPRC requests inclusion on the Task Force because, according to NPRC, it has been "the primary private organization representing private rancher and landowner interests in these proceedings." Petition at 2. NPRC also requests that the Task Force's functions be extended to include the Miles City-Ashland segment in addition to the Ashland-Decker segment because of the similarity of issues.

TRRC replied to NPRC's petition on December 16, 1996. TRRC notes that the Task Force has been established to address the impact of the proposed rail construction on aquatic and terrestrial resources. NPRC's petition seeks to expand that role. In addition, TRRC argues that NPRC does not represent all affected landowners.

#### DISCUSSION AND CONCLUSIONS

The purpose of the Task Force is to advise, assist, and coordinate with TRRC in implementing the detailed mitigation measures related to terrestrial (wildlife and vegetation) and aquatic impacts. The participating agencies have the necessary expertise to address the environmental issues and to assist in implementing mitigation measures. Accordingly, we believe that there is ample expertise on the Task Force to carry out its purpose. We see no need to augment the composition of the Task Force.

NPRC's petition seeks to address the property interests of ranchers and other landowners along the TRRC line. Petition at 3. It is unclear from the petition as to what NPRC intends to address in terms of aquatic and terrestrial issues. If NPRC's interests do not relate to those specific issues, its interests are beyond the scope of the Task Force.

The petition also seeks to broaden the scope of the Task Force to include the segment between Miles City and Ashland. The environmental review was completed and mitigation conditions were imposed for this segment in Finance Docket No. 30186 (ICC served Sept. 4, 1985) and modified on administrative appeal (ICC served May 9, 1986). Our reopening of that proceeding in the November 8 decision was limited to removal of a condition (not relevant here), imposition of a 3-year completion requirement, and imposition of a progress reporting requirement. NPRC provides no basis for concluding that the terrestrial and aquatic impacts for the Miles City-Ashland segment need to be reviewed at this point. NPRC seeks to extend the scope of the Task Force to address the landowner's property rights, but provides no rationale for doing so. Accordingly, we will deny NPRC's petition.

The Task Force will consult with affected interests, including NPRC, as the need arises. Any interested party may contact the Task Force to discuss any relevant issue pertaining to aquatic and terrestrial impacts. Those communications may be addressed to: Surface Transportation Board, Section of Environmental Analysis, Washington, DC 20423, Attn: Dana White.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for reconsideration is denied.
2. This decision is effective on the service date.

By the Board, Chairman Morgan, Vice Chairman Simmons, and  
Commissioner Owen.

Vernon A. Williams  
Secretary